(10)

No. 05-1448

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In The

Supreme Court of the United States

JEFFREY H. BECK, Liquidating Trustee of the Estates of Crown Vantage, Inc. and Crown Paper Company,

Petitioner,

v.

PACE INTERNATIONAL UNION, EDWARD J. MILLER, and JEFFREY D. MACEK,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

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		AND LIMITED TO 5 PAGES, TO BE SUBMITTED WITHIN ONE WEEK. 4) ORAL RULING WILL BE MADE VIA TELEPHONE ON DECEMBER 11, 2001 @ 3:00 P.M. MARY WARREN TO SET UP TELEPHONE CONFERENCE WITH ALL PARTIES. 5) TRO TO STAY IN EFFECT UNTIL DECEMBER 11, 2001. (plt) (Entered: 12/04/2001)
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Relevant Docket Entries in the United States District Court for the Northern District of California, Case No. 02-01407

Date	Dkt. No.	Entry
03/22/2002	1	Notice of APPEAL FROM BANKRUPTCY COURT. Bankruptcy Court case number 01-4375. File received. Filed by Crown Vantage, Inc.. (be,) (Entered: 03/29/2002)
12/09/2002	19	Minute Entry: Bankruptcy Appeal hearing held on 12/9/2002 before Chief Judge Marilyn H. Patel. Counsel submit after further discussion; Matter deemed submitted; Court to issue order; (Court Reporter Debra Pas.) (gba) (Entered: 12/16/2002)
01/10/2003	20	MEMORANDUM AND ORDER by Chief Judge Marilyn H. Patel that the court hereby AFFIRMS the preliminary injunction as issued by the bankruptcy court. The court further ORDERS that Pace International Union is DISMISSED from the present action. DISMISSING CASE. (gba) (Entered: 01/14/2003)
02/06/2003	21	NOTICE OF APPEAL re [20] by Crown Vantage, Inc.. (Filing fee $105.00 receipt number 3343954) (gba,) (Entered: 02/07/2003)

02/18/2003	23	NOTICE OF CROSS APPEAL re [20] by Pace International Union. (Filing fee $105.00 receipt number 3344420) (gba,) (Entered: 02/20/2003)

APPENDIX 3
Relevant Docket Entries in the United States Court of Appeals for the Ninth Circuit, Case Nos. 03-15303, 03-15331

Date	Entry
02/20/2003	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): no. setting schedule as follows: appellant's designation of RT is due 2/18/03; appellee's designation of RT is due 2/26/03; appellant shall order transcript by 3/10/03; court reporter shall file transcript in DC by 4/8/03; certificate of record shall be filed by 4/15/03; appellant's opening brief is due 5/27/03; appellees' brief is due 6/24/03; appellants' reply brief is due 7/8/03; 03-15303! (dg) [03-15303]
02/27/2003	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT: no. The x-appeal brfing schedule is as follows: designation dsgn of RT is due 2/28/03 for Pace International in 03-15331; designation of RT is due 3/10/03 for Beck in 03-15331; Pace shall order transcript by 3/20/03 in 03-15331; court reporter shall file in DC by 4/21/03 for Katherine Pope Wyatt in 03-15331; certificate of record shall be filed by 4/28/03 in 03-15331; 1st x-appeal brf is due 5/27/03 for Beck; 2nd x-appeal brf is due 7/7/03 for Pace International; 3rd x-appeal brf is due 8/6/03 Beck; optional x-appeal rpy brf is due 8/20/03

	for Pace International. [03-15331, 03-15303] (jr) [03-15303 03-15331]
11/4/2004	ARGUED AND SUBMITTED TO Stephen R. REINHARDT, Richard A. PAEZ, Marsha S. BERZON [03-15303] (wp) [03-15303]
10/24/2005	FILED MEMORANDUM DISPOSITION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Unsigned, Unpublished. Stephen R. REINHARDT, Richard A. PAEZ, Marsha S. BERZON) FILED AND ENTERED JUDGMENT. [03-15303, 03-15331] (mhf) [03-15303 03-15331]
10/24/2005	FILED OPINION: AFFIRMED in part; VACATED in part and REMANDED. The mtns to take judicial notice on filed on 3/16/04 and 6/7/04 are DENIED. (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Stephen R. REINHARDT; Richard A. PAEZ, author; Marsha S. BERZON.) FILED AND ENTERED JUDGMENT. (mhf) [03-15303 03-15331]
1/10/2006	Filed order (Stephen R. REINHARDT, Richard A. PAEZ, Marsha S. BERZON): . . . the petition for rehearing and the petition for rehearing en banc is denied. [5621646-1] [03-15303, 03-15331] (gva) [03-15303 03-15331]

5/15/2006	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 05-1448 filed on 5/10/06. (PANEL) [03-15303, 03-15331] (gva) [03-15303 03-15331]

APPENDIX 4
Motion by PACE International Union for Temporary Restraining Order (Adv. No. 01-4375AN, Bankr. N.D. Cal., filed Nov. 15, 2001)

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On behalf of Represented Employees and Participants,
Including Creditors Edward J. Miller and
Jeffrey D. Macek and others similarly situated

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re	) Jointly Administered
CROWN VANTAGE, INC.,	) No. 00-41584N
Debtors,	) Chapter 11
Employer I.D. No. 54-1752384	) Adversary No. 01 4375 AN
PACE INTERNATIONAL UNION, on behalf of members and former member participants in pension plans sponsored by the Debtors; Edward J. Miller, Jeffrey D.	) **EMERGENCY MOTION UNDER BANKRUPTCY RULE 7065 FOR A TEMPORARY ORDER RESPECTING HOURLY PENSION PLANS**

Macek on behalf of themselves and others similarly situated, Plaintiffs, vs. CROWN VANTAGE INC.; CROWN PAPER COMPANY; TRUSTEES OF CROWN VANTAGE PENSION PLANS NOS. 1-1, 4, 7, 10, 11, Adams, Peninsular, Milford, Port Huton, Richmond Frozen Plan No. 4, Frozen Peninsular, Frozen Plan No. 1-1, Frozen Adams, Frozen, Milford, Frozen Port Huron an Frozen Richmond, GEORGE B. JAMES, JAMES S. WATKINSON, E. LEE SHOWALTER, ROBERT A. OLAH, DONNA WEAVER and WILLIAM WALSH, as Directors of Crown Vantage, Inc. and of Crown Paper Co.; and EVAN DAVIS, as an officer of the Debtors and a fiduciary to the Debtors' pension plans covering hourly employees, Defendants.	Hearing Date: To be set by the Court pursuant to Bankruptcy Local Rules 9006-1 and 9014-1. (Filed Nov. 13, 2001)*

* [Editor's Note: The bankruptcy court docket and the text of this motion both indicate that it was in fact filed on Nov. 15, 2001. However, the record copy of the motion bears a filestamp dated Nov. 13, 2001.]

To Debtors and all other parties entitled to notice, and to the Department of Labor and the Pension Benefit Guaranty Corporation:

Please take notice that on ___ at ___, in the United States Bankruptcy Court for the Northern District of California, Oakland Division, located at 1301 Clay Street in Oakland, Plaintiffs and Creditors will, and hereby do, move for an Order on the terms stated in the Proposed Order filed herewith.

This motion is based on all the files in the bankruptcy proceeding, including but not limited to the OBJECTIONS TO CONFIRMATION OF DEBTORS' JOINT LIQUIDATING PLAN OF REORGANIZATION, and papers in support thereof, filed by the Plaintiffs and Creditors on November 13, 2001. This motion is further based on the *Declaration of Christian L. Raisner*, filed herewith.

Immediate relief is appropriate under Bankruptcy Rule 7065 because Plaintiffs are suffering and will suffer immediate and irreparable injury. This injury includes, but is not limited to the fact that Defendants have wrongfully transferred more than $84 million in pension assets to Hartford Life Insurance Company, where all interest and dividends are accruing to Hartford, rather than to the pension plans.

Plaintiffs and Creditors are likely to prevail in the adversary proceeding.

I certify that I have complied with Federal Rule of Civil Procedure 65(b) by sending a facsimile transmission of the adversary Complaint and this motion on the attorneys for Debtors and on the Pension Benefit Guaranty Corporation.

Dated: November 15, 2001

Respectfully submitted,

VAN BOURG, WEINBERG,
ROGER & ROSENFELD
A Professional Corporation

By: /s/ Christian L. Raisner
CHRISTIAN L. RAISNER
Attorney for Creditor
PACE International Union

[Proof Of Service Omitted In Printing]

APPENDIX 5
First Amended Complaint for Declaratory and Injunctive Relief and Money Relief for Breach of Fiduciary Duties Respecting Pension Plans and for Appointment of Independent Fiduciary (Adv. No. 01-4375AN, Bankr. N.D. Cal., filed Nov. 19, 2001)

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On behalf of Represented Employees and Participants,
Including Creditors Edward J. Miller and
Jeffrey D. Macek and others similarly situated

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re	)	Jointly Administered
CROWN VANTAGE, INC.,	)	No. 00-41584-N
Debtors,	)	Chapter 11
Employer I.D. No. 54-1752384	)	Adversary No._01 4375 AN

PACE INTERNATIONAL UNION, on behalf of members and former member participants in pension plans sponsored by the Debtors, Edward J. Miller, Jeffrey D. Macek on behalf of themselves and others similarly situated,

Plaintiffs,

vs.

CROWN VANTAGE INC.; CROWN PAPER COMPANY; TRUSTEES OF CROWN VANTAGE PENSION PLANS NOS. 1-1, 4, 7, 10, 11, Adams, Peninsular, Milford, Port Huron, Richmond Frozen Plan No. 4, Frozen Peninsular, Frozen Plan No. 1-1, Frozen Adams, Frozen, Milford, Frozen Port Huron and Frozen Richmond; GEORGE B. JAMES, JAMES S. WATKINSON, E. LEE SHOWALTER, ROBERT A. OLAH, DONNA WEAVER and WILLIAM WALSH, as Directors of Crown Vantage, Inc. and of Crown Paper Co.; and EVAN C. DAVIS, as an officer of the Debtors and a fiduciary to the Debtors' pension plans covering hourly employees,

Defendants.

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND MONEY RELIEF FOR BREACH OF FIDUCIARY DUTIES RESPECTING PENSION PLANS AND FOR APPOINTMENT OF INDEPENDENT FIDUCIARY

(Filed Nov. 19, 2001)

This Complaint is brought on behalf of participants and beneficiaries of the pension plans covering hourly employees of the Debtors, to remedy breaches of fiduciary duty, for preliminary and permanent injunctive relief to restore the status quo before October 9, 2001, declaring void and rescinding the transfer of more than $84 million in pension assets to Hartford Life Insurance Company, and appointing an Independent Fiduciary instead of Defendants, to evaluate the disposition of pension plans covering hourly employees, based on all information available and applying ERISA fiduciary standards.

I. JURISDICTION, PARTIES AND VENUE

1. Plaintiff Paper, Allied-Industrial, Chemical & Energy Workers International Union, AFL-CIO ("PACE"), and its local unions represent more than a thousand workers formerly employed by Crown Vantage, Inc., and Crown Paper Co. PACE is a creditor and party in interest in jointly administered Case No 00-41584N. PACE had collective bargaining agreements at six of the Debtors' seven mills, all of which set pension levels.

2. Plaintiff Edward J. Miller is a retired employee of Creditors and is a participant in two of its pensions plans, Nos. 1-1 and Frozen 1-1. Jeffrey D. Macek is a former employee of Creditors, not yet retired, and is a participant in two other of its pension plans, Adams and Frozen Adams, which were merged into Plan No 7. Miller and Macek are creditors and parties in interest and in this Complaint are referred to as "Participants." Participants of other pension plans intend to join this Complaint as Plaintiffs. Participants bring this action on behalf of themselves and others similarly situated.

3. Defendants Crown Vantage, Inc. and Crown Paper Co. (collectively "Crown" herein) are the Debtors and Debtors-in-Possession in the jointly administered bankruptcy case No. 00-41584N. Defendants GEORGE B. JAMES, JAMES S. WATKINSON, E. LEE SHOWALTER, ROBERT A. OLAH, DONNA WEAVER and WILLIAM WALSH are Directors of Crown Vantage, Inc., and Crown Paper Co., and as such have authority to determine the actions of Crown Vantage, Inc. and Crown Paper Co., in respect of the pension plans. Defendant EVAN C. DAVIS is Senior Vice President, General Counsel and Secretary of Crown Vantage, Inc., and Crown Paper Co., and as such exercises effective control of the pension plans. These individuals sued in their capacities as fiduciaries. Each of the Defendants was, and is, at times material to this Complaint, fiduciaries of the Debtors' pension plans covering its hourly employees ("Pension Plans"), pursuant to Section 3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A). The Defendants, and each of them, exercised contractual, functional and/or *de facto* discretionary authority or discretionary control over the management of the Pension Plans; exercised authority or control respecting management or disposition of the Pension Plans' assets; and had discretionary authority or discretionary responsibility in the administration of the Pension Plans.

4. This is a core proceeding over which this court has jurisdiction pursuant to 28 U.S.C. §157(b)(2) and 11 U.S.C. §105. This matter relates to the case of Crown Vantage, Inc, Jointly Administered No 00-41584-N-11, currently pending in the Northern District of California in the Oakland Division, where venue is proper. All of the Defendants are Debtors or acted as agents of the Debtors in this

Chapter 11 case. All of the Plaintiffs are creditors of the Debtors.

5. This action seeks declaratory and injunctive relief for, *inter alia*, breach of fiduciary duties under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §1001, *et seq*. Jurisdiction of this Court arises under and pursuant to Sections 502(a)(2) and (e)(1) of ERISA, 29 U S.C. §§1132(a)(2) and (e)(1), and 28 U S.C. §1331. A copy of this Complaint is being served on the Secretary of Labor and the Secretary of the Treasury pursuant to Section 502(h) of ERISA, 29 U.S.C. §1132(h).

6. This matter is properly brought as an adversary proceeding pursuant to Rule 7001, F.R. Bankr. P.

II. FACTUAL ALLEGATIONS

7. Crown is the sponsor and plan administrator of at least 16 pension plans that covered hourly employees. Several thousand workers are covered. These are single-employer, defined benefit plans, with the level of benefit being defined in collective bargaining agreements. Appendix A to this brief lists all pension plans for hourly employees for which Crown Paper Co. is currently the sponsor and plan administrator. Some of the Pension Plans, known as "frozen plans," were established by predecessors of Crown, primarily James River. On August 22, 1995, Crown assumed responsibility for these James River plans, which became "frozen" in the sense that the participants would not accrue further benefits. On the same date, Crown created a series of new "on-going plans" for its current employees. Benefits under the on-going plans accrued only after August 22, 1995. Since then, several of the on-going

or frozen plans have merged or been taken over by other entities, such as Tembec, which took over the St. Francisville pension plans.

8. Crown filed its Chapter 11 petition on March 15, 2000. Except as to the St. Francisville plant, whose pension plan is no longer Crown's responsibility, Crown did not seek to have its collective bargaining agreements abrogated or modified under Section 1113. According to the information provided to PACE by the Debtors, 13 of the Pension Plans are now underfunded. With a single minor exception, Crown made no contributions to the frozen plans, since the filing of the Chapter 11 petitions.

9. From March 15, 2000, to the present, Crown has not made contributions to the plan sufficient to keep them adequately funded.

10. From March 15, 2000, to the present, Crown has not kept participants informed of the plans' underfunding.

11. Crown did not file any claims in the bankruptcy proceedings for moneys due to the plans.

12. By July 2001, Crown had disposed of, or closed, all of its paper mills. In July and early August, Crown was considering termination of the pension plans under 29 U.S.C. § 4041, which permits termination of a pension plan where annuities can be purchased for all participants providing the full amount of benefits available as a pension. Some of the plans were overfunded and some underfunded, and Crown decided to merge eleven plans into one of the plans.

13. This, Crown speculated, might provide enough money to purchase a single-premium annuity policy. Acting on the unfounded notion that PBGC would not

permit an underfunded frozen plan to join the merger, Crown left five frozen plans out of the merger and effectively abandoned them to PBGC.

14. On July 20, Crown hired Dietrich & Associates, Inc., to help in the purchase of annuities. Dietrich's commission for this work is .2% of the premium – more than $168,000. Dietrich was to assemble the facts and figures concerning pension assets and benefits, solicit bids from various insurance companies, evaluate the bids, and submit a proposal to Crown. Among Dietrich's duties was to "explore and present alternative contractual arrangements that may warrant consideration . . . "

15. In the middle of August, Crown's chief officer Evan Davis met with PACE Vice-President Bob Smith. Smith suggested that having PIUMPF take over all the remaining hourly pension plans would be a good solution. PIUMPF stands for PACE Industry Union-Management Pension Fund. PIUMPF is a multi-employer Taft-Hartley trust with equal numbers of employer and union trustees. It has assets exceeding $1.3 billion dollars, includes 280 paper industry employers, and covers approximately more than 16 retirees. Davis agreed that it should be looked into. The August 28 minutes of Crown's Board of Directors state:

> The Union has offered to consider taking on all the hourly pension plans into PIUMPF, the union multi-employer plan. They are reviewing the data and will be notifying us if this is acceptable. Since this would be *a favorable alternative* we are delaying the quotes on annuities that are presently being developed until this is resolved.

16. PIUMPF commissioned The Segal Company to analyze the data made available by Crown. Based on that analysis, PIUMPF was willing to merge *all* hourly pension plans, thereby paying 100 cents to the dollar to *every* Crown retiree and employee. At some later point Crown informed PACE that it should exclude Frozen Plan No. 1-1, Frozen Adams, Frozen Milford, Frozen Port Huron and Frozen Richmond from the merger, leaving only 11 plans for merger. On October 8, 2001, PIUMPF offered to merge these 11 plans.

17. The merger of plans into PIUMPF was in fact a favorable alternative that would fully protect the benefits of all Pension Plan participants. The PIUMPF alternative would also provide certain additional benefits and advantages to the participants:

a. If all plans are merged into PIUMPF, retirees would receive a single pension check from PIUMPF. If an annuity is purchased instead, the retirees will receive separate checks – one from PBGC or Georgia-Pacific to cover the frozen plan and another from Hartford Insurance to cover the Crown on-going plans. In principle these smaller checks will total to the same amount as a single PIUMPF check; but they will also cause trouble, expense and confusion to their elderly recipients.

b. PIUMPF has a history of increasing retiree benefits when its assets accumulate but annuities purchased from an insurance company would deny the retirees any opportunity to obtain an increased benefit. An annuity would pay retirees only a fixed amount, with any increase in assets going to the profit-making insurance company.

c. PIUMPF has well-defined dispute resolution procedures. Disputes between employers and the union

about the meaning of the plan are handled by the American Arbitration Association. Disputes by claimants about eligibility or amount are handled quickly and fairly: Denial of a claim must be supported by evidence. If the claimant is dissatisfied, there is direct appeal to the PIUMPF board of trustees, composed of equal numbers of industry and union representatives.

d. When merged into PIUMPF the pension assets continue to be held by ERISA fiduciaries and are safe from the retiree's creditors.

e. If PIUMPF should fail, the PBGC stands as guarantor. If an insurance company should fail (as, for example, Executive Life Insurance Co. did), the retiree is out of luck, except for suits against the ERISA fiduciaries. See, e.g, *Bussian v. RJR Nabisco, Inc.* (5 Cir. 2000) 223 F.3d 286.

18. The September 26 minutes of the Crown Board of Directors state:

> The Union has offered to take all of the hourly pension plans into PIUMPF, the union multi-employer plan This offer will be evaluated in comparison to the annuitization of plans when we receive final bids from the annuity providers . . .

The Crown Board of Directors met on October 9, 2001. Until late in the afternoon of October 9, Crown had not received the annuity provider bids. When the Board met at 4:30 p.m., its attorney informed it that a decision had to be made *that very day* – and a decision was made. The minutes state:

> The offer of Pace International Union to merge the hourly plans into PIUMPF, their multi-employer plan was discussed. While it is anticipated that

> the Union will be disappointed with the decision to annuitize the plans rather than effect a merger, the PBGC has expressed reservations about this course of action. While the PBGC agreed to release the two plans under the James River Agreement and any other claims against the estate under the annuitization scenario, there was no such agreement if we insisted on the merger [with PIUMPF].

In fact, PBGC had not evaluated the PIUMPF merger alternative and had no reservations about it.

19. Debtors had interests in conflict with those of the pension plan participants in that Debtors believed that they were entitled to a reversion of the pension plan assets. Evan C. Davis and four of six Directors had interests in conflict with those of the pension plan participants in that they had filed claims in the bankruptcy proceedings.

20. On October 11, 2001 without the knowledge of PIUMPF, PACE, or the Bankruptcy Court, Crown transferred $84,145,794 to Hartford Life Insurance Company. No one at Crown – neither the Board of Directors nor Shearman & Sterling nor Dietrich – ever saw the Group Annuity Contract before transferring as a deposit the sum exceeding $84 million. The exact terms of the policy were unknown to Crown when it made the transfer and when it made the decision to purchase annuities.

21. Crown failed to evaluate the PACE offer "in comparison to the annuitization of plans when we receive final bids from the annuity providers," between September 26 and October 9, or at any time. The Crown Board of Directors failed to examine the information it had requested and received from PIUMPF. No part of the

PIUMPF offer sent to Dietrich, which was being paid more than $168,000 to advise on the future of the pension plans. The only entity to look at the PIUMPF material was the law firm of Shearman & Sterling, which made no written comparison. The Crown Board did not know that PIUMPF had a history of increasing pension benefits. The Crown Board took no account of the other points of comparison, such as the PIUMPF dispute resolution procedures or the importance of retiree's receiving a single pension check from a single source.

22. On October 25, without the knowledge of PACE or this Court, Crown amended the plan documents to cause eleven plans to merge.

23. On October 31, again without prior notice to PACE, other parties in interest or the Court, Crown wrote to its former employees informing them that their pension plans had been terminated. A copy of the letter was not forwarded to PACE or its counsel. The letter told each employee to expect receiving checks in a particular dollar amount from Hartford Life Insurance Company for that portion of his or her pension covered by the Crown on-going plans. Employees were not informed that for most of the frozen plans they might expect a check – in an uncertain amount – from PBGC, or perhaps from Georgia-Pacific.

24. Also on October 31, Crown sent a Notice of Termination of the pension plans to PBGC – claiming a reversion of somewhere between $3.2 and $4 million. Yet on October 4, 2001 Crown's attorney ~~stated~~ in open court that disposition of the pension plans "doesn't affect the distribution one bit under the [Reorganization] Plan. The fact is they're not Crown assets; they're not Crown Paper's

assets, Crown Paper is acting as a fiduciary because they're Plan sponsor." The termination provisions of the merged pension plan do not allow Crown to take any reversion.

25. While the $84 million remains with Hartford, interest and dividends on that amount to accrue to Hartford, not to the Crown pension plans. The plans are suffering a loss of interest exceeding $10,000 per day.

FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty)

26. The preceding paragraphs numbered 1-25 are incorporated by this reference into this Cause of Action.

27. The Defendants, and each of them, exercised actual, contractual, functional and/or de facto discretionary authority or discretionary control over the management of the Pension Plans, exercised authority or control respecting management or disposition of Pension Plan assets, and had discretionary authority or discretionary responsibility in the administration of the Pension Plans.

28. As fiduciaries of the Pension Plans, the Defendants, and each of them, in the conduct alleged above in this Complaint, failed to comply with ERISA Section 404(a), 29 U.S.C. §1104(a), and failed to exercise the care, skill, prudence and diligence required of a fiduciary under ERISA Sections 3(21)(A) and 405(c)(1)(B), 29 U.S.C. §§1002(21)(A) and §1105(c)(1)(B), in that Defendants did not discharge their duties to the Pension Plans and the participants and beneficiaries with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and

familiar with such matters would use in the conduct of an enterprise of a like character and like aims. These duties included, but were not limited to, the duty to perform a diligent investigation into the PIUMPF proposal and to make a detailed comparison between the PIUMPF proposal and the Hartford proposal.

29. In the conduct alleged above in this Complaint, the Defendants, and each of them, failed to discharge their duties solely in the interest of the participants and beneficiaries and for exclusive providing benefits to participants and their beneficiaries and defraying reasonable administrative expenses as they were required to do by ERISA Section 404(a)(1)(a), 29 U.S.C. §1104(a)(1)(a). Defendants also failed to adhere to the lawful provisions of plan documents as they were required to do by ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). These failures include, but are not limited to, failure to accept the PIUMPF plan, which was more in the interest of the participants than the Hartford plan. The failures also include, but are not limited to, placing $84,000,000 into an account where it earned no interest or dividends and could not grow.

30. In the conduct alleged above in this Complaint, the Defendants, and each of them, were in an actual conflict of interest. They did not take adequate steps to assure that any decision they made in respect of the pension plans was unbiased.

31. The failure of the Defendants to carry out their fiduciary duties in accordance with ERISA standards continues to this date, at great risk of expense to the Pension Plans. The harm caused to all participants and beneficiaries will be permanent and to many, if not all of

them the harm will extremely severe. If relief is not granted, many of the participants and their beneficiaries will suffer permanent loss of the opportunity to obtain a full or increased benefit. If relief is not granted, participants and their beneficiaries will be denied forever the services of prudent and faithful fiduciaries and will be deprived of the possibility of enhanced benefits. If relief is not granted there will never be a fair consideration of the benefits of merger of the Pension Plans into PIUMPF. If relief is not granted, a reversion will pass through the bankruptcy estate for the benefit of various of the Defendants themselves who have claims against the estate. If relief is not granted, the Debtors' direct breach of the instructions of the Bankruptcy court, and the promise to follow them, will be rewarded rather than be condemned and halted as required by the interests of justice and respect for the judicial process.

32. Plaintiffs are entitled to a declaration that Defendants have breached their ERISA fiduciary duties of care and loyalty toward the Participants and their beneficiaries by engaging in the conduct alleged in this Complaint.

33. ERISA provides remedies for the fiduciary breaches alleged herein, including, in addition to the declaratory relief, an injunction and any other appropriate equitable relief to redress violations of ERISA and the terms of the Pension Plan. In this situation, where Defendants have acted with conflicting interests and disregarding their fiduciary duties, the following relief is available and is required:

a. An order of the Bankruptcy Court directing the Defendants to rescind any action made since October 9 respecting the Pension Plans and to restore fully the status quo ante; and

b. Appointment of an Independent Fiduciary is needed, to replace all of the Defendants with respect to any control or authority over Pension Plan assets. The Independent fiduciary perform all fiduciary duties required by ERISA and should evaluate all options available in the interests of participants and beneficiaries, subject to review by the Court, including merger of plans into PIUMPF.

34. Plaintiffs are entitled to an award of their reasonable attorneys fees and the costs of this action.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty as to Underfunding)

35. Crown violated its fiduciary duties to participants by failing, from March 15, 2000, to the present day, to make contributions to the plans to keep them adequately funded.

36. Crown violated its fiduciary duties to participants by failing, from March 15, 2000, to the present day, to give adequate notice to participants and their representatives of the plans' underfunding.

37. Crown violated its fiduciary duties to participants by failing, from March 15, 2000, to the present day, to file claims in the bankruptcy proceedings on behalf of the plans.

PRAYER FOR RELIEF

Plaintiffs in this Complaint respectfully request that the following relief be granted in their favor and against all of the Defendants:

A. A declaration that the Defendants have breached their duties of care and loyalty to the participants and beneficiaries by failing to evaluate the options of merger of plans into PIUMPF, in transferring funds tc Hartford Life Insurance Company, and in deciding to terminate plans and purchase annuities while stating that no decision had been made, in sending notices regarding plan termination to participants and to PBGC, and by failing to abide by the court's directive to include in the plan of reorganization the right to receive notice and a hearing before any action would be taken respecting Pension Plans.

B. An order enjoining all Defendants from proceeding in any manner regarding the Pension Plans for hourly employees, except to preserve the status quo as it existed before October 9, 2001, and declaring void and rescinding any and all acts effecting transfer of Pension Plan assets to Hartford Insurance Company.

C. An order appointing an Independent Fiduciary to act as the fiduciary to all of the Pension Plans in place of all of the Defendants, to evaluate the constitution of the Pension Plans and to consider all options available in the interests of the Participants and their beneficiaries, and, subject to review by the Court, to take appropriate action consistent with ERISA fiduciary duties.

D. An order requiring Defendants, and each of them, to pay into the pension plans an amount sufficient to fund them adequately – an amount to be proved at trial.

E. An order requiring Defendants, and each of them, to pay Plaintiffs reasonable attorneys fees and costs.

F. Such other and/or further relief as may seem appropriate to the Court.

Dated: November 19, 2001

VAN BOURG, WEINBERG,
ROGER & ROSENFELD
A Professional Corporation
By: /s/ Christian L. Raisner
CHRISTIAN L. RAISNER
Attorneys for Plaintiffs

APPENDIX 6

***Excerpts from* Transcript of Proceedings: Nov. 29, 2001, Hearing re: TRO, Preliminary Injunction (Adv. No. 01-4375AN, Bankr. N.D. Cal.)**

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re	) Case No. 00-41584 N
CROWN VANTAGE, INC.,	) Case No. 00-41583 N) Jointly Administered
Debtor.	) Chapter 11
PACE INTERNATIONAL UNION,	) Adversary Proceeding) No. 01-4375 AN
Plaintiffs,	) Oakland, California
vs.	) Thursday, November 29, 2001) 9:30 a.m. Calendar
CROWN VANTAGE, CROWN PAPER COMPANY, ET AL.,	) TRO, PRELIMINARY INJUNCTION
Defendants.	)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RANDALL J. NEWSOME,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

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For the Defendants:	MARY K. WARREN JUDITH GERMANO SHEARMAN & STERLING 599 Lexington Avenue New York, NY 10022-6069 (212) 848-4000 (212) 848-7179 (fax)
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Transcription Service:	Kathy Rehling 209 Bay Circle Coppell, TX 75019 (972) 304-1998 (972) 304-2298 (fax)

* * *

[3] THE COURT: All right. Rather than taking up opening statements at this point, I think I actually have a pretty fair idea as to what the issues are. We have someone on – a witness on the telephone. I would propose that we go forward with that testimony, and then come back and resume from there. Is that satisfactory?

MR. PLOTZ: Yes, Your Honor.

MS. WARREN: That's fine.

THE COURT: Okay. Then what arrangements have been made to swear in the witness that's on the phone?

MR. PLOTZ: Your Honor, we have arranged to have a notary court reporter present in Mr. DeFranco's office –

THE COURT: All right.

[4] MR. PLOTZ: – of his swearing-in from Washington, D.C. I assume that that person is there.

THE COURT: Is there a notary or court reporter present with Mr. DeFranco?

MR. DE FRANCO: There is.

THE COURT: And – all right, then. Why not have the notary or court reporter swear in the witness on the record at this point?

MR. DE FRANCO: Would you like to hear her do that?

THE COURT: Yes, I would.

MR. DE FRANCO: Just a moment, Your Honor.

NOTARY PUBLIC: Good morning, Your Honor.

THE COURT: Good morning.

NOTARY PUBLIC: This is Lisa Dimonte. I'm the notary public from Washington, D.C.

THE COURT: Thank you.

NOTARY PUBLIC: You're welcome.

THE COURT: Would you like to swear in Mr. DeFranco, please?

NOTARY PUBLIC: Yes, sir.

THE COURT: All right.

JOSEPH DE FRANCO, PLAINTIFFS' WITNESS, SWORN

THE COURT: All right. Thank you very much, Mr. DeFranco. Would you like to state your name for the record, please?

[5] THE WITNESS: Joseph DeFranco, D-E-F-R-A-N-C-O.

THE COURT: All right. Mr. Plotz, you may resume.

DIRECT EXAMINATION

BY MR. PLOTZ:

Q Mr. DeFranco, what is your position?

A I'm an attorney with the Office of General Counsel of the Pension Benefit Guaranty Corporation.

Q In that capacity, did you provide legal counsel to PBG staff and do lawyer's work relating to the present bankruptcy case, Crown Vantage, Inc.?

A Yes, I did.

Q Okay. Was it your understanding that in the summer of 2001, PACE International made a proposal to the attorneys for Crown Vantage to effectively have Crown merge certain of Crown's defined benefit pension plans into a single defined benefit plan, and then to have that resulting plan merge into a multi-employer plan maintained by PACE?

A Yes. Crown attorneys so advised me.

Q Did you ever state to a Crown attorney, or to anyone at Crown, that the agency had a reservation about the proposal?

A I did not.

Q Did you ever state that the agency had a concern about the proposal?

A I did not.

Q To your knowledge, has any person at PBGC expressed an [6] opinion to Crown, favorable or unfavorable, on the PACE proposal?

A Not to my knowledge.

Q I don't know, sir: do you have in front of you the correspondence between you and Mr. Cicero?

A That was attached to your motion?

Q Actually, I don't recall if it was or not.

A Well, there's some correspondence that was attached as Exhibit A to one of the documents.

Q Well, let me just ask you briefly.

A I have some of the correspondence.

MS. WARREN: Excuse me, counsel.

MR. PLOTZ: Okay.

THE WITNESS: Go ahead.

MS. WARREN: I don't have that in front of me.

THE WITNESS: Okay.

MS. WARREN: This was attached to your motion, Mr. Plotz?

MR. PLOTZ: I actually don't remember. I don't recall what Mr. DeFranco –

THE COURT: What are you – what is it that you're referring to exactly?

MR. PLOTZ: Okay.

THE COURT: Not just "correspondence."

MR. PLOTZ: Okay.

[7] BY MR. PLOTZ:

Q Is Exhibit 16 of our –

THE COURT: What is the – Mr. Plotz?

MR. PLOTZ: Yes?

THE COURT: What is the letter that you're referring to?

MR. PLOTZ: It is –

THE COURT: What is the date of the letter? Who is it from, and who is it to?

MR. PLOTZ: It is a July 27th, 2001 letter from Robert Cicero to Michael Vito (phonetic).

THE COURT: Do you have that document, Mr. DeFranco?

THE WITNESS: I'm looking for it –

THE COURT: All right.

THE WITNESS: – to see if I do or I don't.

(Pause.)

THE WITNESS: July 27, Mr. Cicero to Mr. Vito. I do.

THE COURT: All right.

MR. PLOTZ: Okay.

BY MR. PLOTZ:

Q Did you receive that letter?

A Yes, I was copied on it.

Q Thank you. Referring to a letter dated October 11th, 2001, –

THE COURT: Do you have exhibit numbers for any of [8] these?

MR. PLOTZ: I do. Exhibit 36.

THE COURT: Was that the Cicero letter?

MR. PLOTZ: This is a letter from –

THE COURT: I'm talking about the – Mr. Plotz, I'm talking about the first letter.

MR. PLOTZ: Yes.

THE COURT: I need to look at these as we go along.

MR. PLOTZ: I'm sorry. Yes, it was –

THE COURT: What's the exhibit number of the first letter?

MR. PLOTZ: The exhibit number of the first letter is Exhibit 16.

THE COURT: Thank you.

MR. PLOTZ: It is a letter from Mr. Cicero to Mr. Vito –

THE COURT: All right.

MR. PLOTZ: – at PBGC.

BY MR. PLOTZ:

Q Referring to Exhibit 36, which is a letter from Mr. DeFranco to Mr. Cicero dated October 11th, do you have that in front of you, sir?

A I have that letter.

Q Did you send that letter?

A Yes, I did.

[9] Q Thank you.

MR. PLOTZ: That's all the questions I have.

THE COURT: All right. Thank you. Ms. Warren?

CROSS-EXAMINATION

BY MS. WARREN:

Q Mr. DeFranco, my name is Mary Warren. I'm with Shearman & Sterling, representing the defendants. Good morning.

A Good morning.

Q During the summer and fall of this year, about how often did you speak to someone from Shearman & Sterling about Crown's disposition of its pension plans?

A A number of times.

Q Would you say fairly frequently?

A No, because I don't know what that means, but a number of times.

Q A few times a month?

A It could have been.

Q Who was your primary contact at Shearman & Sterling?

A Mr. Cicero.

Q And during the summer and fall of this year, did you ever tell Mr. Cicero, in words or substance, that the PBGC thought a standard termination of Crown's pension plans was a bad idea?

A Say that again.

Q Did you ever tell Mr. Cicero, in words or substance, that the PBGC thought a standard termination of Crown's pension plans [10] was a bad idea?

A I did not.

Q Did you ever tell Mr. Cicero, in words or substance, that the PBGC wanted Crown to stop the standard termination process?

A No.

Q Did you ever tell Mr. Cicero, in words or substance, that the PBGC thought it would be harmful for pension plan participants if Crown effectuated a standard termination of its plans?

A No.

Q During your conversations with Mr. Cicero about a possible PIUMPF merger, did you make any promises about whether PBGC would release the frozen plans in that context, if that's what Crown decided to do?

A I'm sorry. I didn't understand the first part of your question.

Q Sure. Let me –

A Can you repeat it?

Q Sure. During your conver . . .

A What was the word you used?

THE COURT: Let her repeat the question, Mr. DeFranco.

THE WITNESS: Okay.

BY MS. WARREN:

Q During your conversations with Mr. Cicero about a possible PIUMPF merger, –

A What's a PIUMPF? I'm sorry.

[11] Q Okay. It's the PACE Industry –

A Oh, okay.

Q – Union Management Pension –

A Okay. That's the word I didn't understand.

Q Okay. Sorry about that.

A Okay.

Q So I'll be using the term PIUMPF to refer to that plan.

A Okay. That's fine now. Right.

Q All right. So during your conversations with Mr. Cicero about a possible PIUMPF merger for the Crown plans, –

A Okay.

Q – did you make any promises about whether PBGC would release the frozen plans in that context?

A No.

Q Is it fair to say that you reserved PBGC's right to decide what to do with the frozen plans if Crown chose the PIUMPF merger?

A I'm not sure that issue came up.

Q Okay.

A Can you repeat the question?

Q Well, is it fair to say that you reserved PBGC's right to decide what, if anything, to do with the frozen plans if Crown ended up choosing the PIUMPF merger instead of a standard termination?

A Well, I think the answer to that has to be yes.

[12] Q Thank you. That's all I have.

A Okay.

THE COURT: Anything else?

MR. PLOTZ: Yes.

REDIRECT EXAMINATION

BY MR. PLOTZ:

Q Mr. DeFranco, did you receive a written request from Mr. Cicero for release of the plans for the PIUMPF merger?

A Well, we received a letter from Mr. Cicero asking for the release, as I recall it, of two plans, but I don't believe it related – or a relation was made to the union's merger.

Q All right. Did you receive from Mr. Cicero any written materials about PIUMPF?

A No.

Q Thank you.

THE COURT: Anything else?

MS. WARREN: I have nothing else.

THE COURT: All right. Then I think that that takes care of it, Mr. DeFranco. We will disconnect the telephone at this point.

THE WITNESS: Thank you, Your Honor.

THE COURT: Thank you.

(Telephonic testimony is concluded

* * *

[53] MARIA WIECK, PLAINTIFFS' WITNESS, SWORN

THE CLERK: Please state your name for the record.

THE WITNESS: Maria F. Wieck, and it's W-I-E-C-K.

DIRECT EXAMINATION

BY MR. PLOTZ:

Q Ms. Wieck, where do are you employed?

A At the PACE Benefit Funds.

Q And what is your position there?

A I'm the administrative officer.

Q And you say you're the administrative officer?

A Uh-huh.

Q What is PACE Benefit Funds?

A It covers PIUMPF, which is the PACE Industry Union Management Pension Fund, the PACE Industry 401(k) Fund, and the PACE industry Health & Welfare Funds.

[54] Q And how long have you been with PIUMPF?

A Since –

Q Excuse me, with PACE Benefit Funds?

A Since 1990, March of 1990.

Q Are you familiar with PIUMPF?

A Yes, I am.

Q Okay. In September of this year, did PIUMPF consider merging the Crown Vantage pension plans?

A Yes.

* * *

[57] Q Okay. Would you tell us how, in merger agreements, that – let me go back a little bit. Over the years, have other plans merged with PIUMPF?

A Yes.

Q What was the most recent merger?

A Actually, we have one with a closing date of tomorrow. It's the OCAW-PACE multi-employer plan.

Q How –

A With an effective date 1-12-02.

Q How many employees involved in that?

A Ten thousand.

Q And do you know the assets?

A The assets are $204 million.

Q Okay. Is that a – paper mill operations?

A No. Those are oil and chemical workers.

* * *

[155] ROBERT SCHAEFER,
DEFENDANTS' WITNESS, SWORN

THE CLERK: Please state your name for the record.

THE WITNESS: Robert Schaefer.

DIRECT EXAMINATION

BY MS. WARREN:

Q Mr. Schaefer, will you give us your full address for the record, too?

A 730 Shlauser Road in Harleysville, Pennsylvania.

Q And what's your position right now?

A I am president of Dietrich & Associates.

Q And what does Dietrich & Associates do?

A We are an annuity placement specialist.

Q And did you assist Crown Vantage in placing – in getting [156] annuities through annuity providers?

A Yes.

* * *

[219] THE COURT: All right. I have a few questions.

DIRECT EXAMINATION

BY THE COURT:

Q Let's start with the questions that Ms. Warren just asked you. I think you've testified that, in an annuity,

the participants or the annuitants no longer bear any of the risk of the investment of the pension plan. The annuity company or the insurance company does. Is that right?

A That's true.

Q Who bore the ultimate risk in Mutual Benefit Life? Are you familiar with that company?

[220] A Yes.

Q It was the annuitant, wasn't it? They were the ones that lost the money.

A Correct.

Q And who bore the ultimate risk in Executive Life?

A To the extent that there were benefits that weren't delivered, it would have been the participants of those.

Q Right. Okay. Let's take a look at Exhibit I, the second page of Exhibit I.

A Okay.

Q Mr. Schaefer, is it just a coincidence that the Hartford offered the highest surplus amount of the four insurance companies that made bids?

A Actually, the surplus is not an offer from Hartford, Your Honor. What that represents is the difference between the Hartford quote and the assets. So the –

Q Same hand, isn't it? I mean, the fact is that the quote was $84 million, so the surplus was higher than if the quote had been $85,693,000 like Travelers.

A Correct.

Q Right. Now, if you'd take a look at Exhibit N.

A Okay.

Q By the way, what exactly were you told by Crown Vantage? What was exactly – what was it that Mr. Cicero or someone else at Shearman & Sterling told you was the mission, your mission in [221] seeking out an annuity here?

A Our mission was to assist in all aspects of the placement.

Q What did that – what does that mean? What specifically were the – was the mission that you were given?

A To provide competitive quotes that were compliant with the plan provisions and assist in the selection process.

Q Was the word "reversion" ever mentioned to you?

A No.

Q All right. Now, I'm looking at the sheets on the ratings, the due diligence information on various insurance companies. The second sheet is the Hartford Life Insurance Company.

A Uh-huh.

MS. WARREN: Your Honor, are you on Exhibit N?

THE COURT: Yes, I am.

THE WITNESS: Yes.

BY THE COURT:

Q Now, tell me what on this sheet you thought was most important in terms of evaluating the financial wherewithal of Hartford.

A Well, it's not only the Hartford, but I guess evaluating the financial wherewithal of all the companies.

Q All right. Well, let's start with the Hartford, because that's the one they ended up picking and that's the one you suggested, I assume.

A We suggested Hartford because, again, all other things be-[222]ing relatively equal, that the combination of their cost and credit made sense.

Q Okay. So what on here about their credit strikes you as most important in evaluating the Hartford as the soundest of these companies?

A Well, we look at their investments and their –

Q What about their investments? What part of their investments do you look at that seem the soundest?

A Their minimal exposure to risky asset classes, noninvestment-grade bonds, nonaffiliate common stocks and delinquent and foreclosed mortgages. That shows us they're very conservative in their investments. We also look at capital and surplus to liabilities. That's a strong ratio. It's well within acceptable ranges. We look at their investments, per se. They don't have a lot of exposure in real estate. Those kinds of things. And I'm not sure that that clearly – again, we're not suggesting that Hartford is clearly better than anyone else, but as even the DOL

recognizes, there can be more than one safest available company, and Hartford I think is within the parameters.

Q The rating information on the Hartford, however, isn't as high as it is on Travelers, is it? Which is about four sheets down.

A Travelers has an extra – they're A++ by Best, versus an A+, which is just a minor – they're degrees of excellence, in [223] our estimation. They're all excellent. They're the same as the Moody's and they're the same as S&P. So a marginal edge from A.M. Best.

Q They have less invested in real estate than Travelers does, don't they? Or I guess – no, Hartford has zero and Travelers has almost zero. So they're about equal there. Their investment yield is higher than Hartford by a full percentage point, or better.

A Uh-huh.

Q Did you look at that?

A Yes.

Q So what is it about the Hartford that attracted you over the Travelers?

A Their cost.

Q It was an extra million?

A In our estimation, Hartford is a qualified company, so again we recommended taking advantage of their cost.

Q How about Met Life?

A Pretty much the same arguments, sir.

Q $181 billion in admitted assets. Over $15 billion in admitted assets in Hartford. Did that have any – play into any of your considerations?

A Again, it – certainly, that's a larger company, but we felt that Hartford was qualified.

Q But that isn't the criteria that you spelled out for what [224] you were looking for. You were looking for the soundest financial investment in which to put these pension assets. Isn't that right?

A Yeah. Yes.

Q So just being qualified, CNA was qualified. They were – and a minor – only slightly less sound, if you will, according to the rating agencies, right?

A Right, according to the ratings. Correct.

Q They would have paid – well, we don't know what they would have done because they were withdrawn from consideration, I guess.

What about the Principal? Same rating as Hartford. Just about the same mount of real estate. A little more, perhaps. I mean, all of these companies look about the same, don't they? So it really boiled down to price?

A That's correct. And that's our contention, that price can't be your primary consideration but it can be a consideration if other things are relatively equal.

Q Now, what would have happened if, in terms of your contract, because all I see from your engagement letter is this is what you're entitled to from the proceeds of the insurance, the annuity. In other words, you get a percentage of whatever it costs for the annuity, right?

A Correct.

Q Twenty basis points, as it is.

[225] A Twenty basis points.

Q Supposing – at the time at which you were retained, was it your understanding that this was what the company was going to do? They absolutely were going to pursue the standard termination route and purchase an annuity?

A Yes.

Q Had you known that they would have considered something else along the way, would you have taken the contract? The engagement?

A Probably.

Q What would have happened if they had decided to merge the plans instead of do the standard termination, in terms of what you were paid?

A I think we would have structured our compensation arrangement a little bit differently, where we – whereby we would have been guaranteed at least some percentage of that.

Q But the point is that as it now is, you – if they decided to merge rather than do a standard termination, or if they were forced to merge, you have no compensation package, do you?

A We've actually been paid by the insurance company. If this deal were to unravel, we – effectively, we have been paid.

Q Okay.

THE COURT: I don't have anything else. Do you have anything else?

MR. RAISNER: No.

[226] THE COURT: Anything else? Okay. You may step down. Thank you.

* * *

APPENDIX 7
Transcript of Proceedings: Jan. 7, 2002, Hearing re: Emergency Motion for Clarification of Preliminary Injunction (Adv. No. 01-4375AN, Bankr. N.D. Cal.)

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re	) **Case No. 00-41584 N**
	) **Case No. 00-41583 N**
CROWN VANTAGE, INC.,	) Jointly Administered
Debtor.	) Chapter 11
PACE INTERNATIONAL UNION,	) **Adversary Proceeding No. 01-4275 AN**
Plaintiffs,	) Oakland, California
	) Monday, January 7, 2002
vs.	) 2:00 p.m. Calendar
CROWN VANTAGE, INC., ET AL.,	) EMERGENCY MOTION FOR CLARIFICATION OF PRE-LIMINARY INJUNCTION
Defendants.	)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RANDALL J. NEWSOME,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

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For the Defendants: *(by telephone)*	JUDITH GERMANO SHEARMAN & STERLING 599 Lexington Avenue New York, NY 10022-6069 (212) 848-4000 (212) 848-7179 (fax)
Court Recorder:	Todd Leyba U.S. Bankruptcy Court 1300 Clay Street, Suite 300 Oakland, CA 94612 (510) 879-3570
[2] Transcription Service:	Kathy Rehling 209 Bay Circle Coppell, TX 75019 (972) 304-1998 (972) 304-2298 (fax)

Proceedings recorded by electronic sound recording; transcript produced by federally-approved transcription service.

[3] OAKLAND, CALIFORNIA, JANUARY 7, 2002, 2:01 P.M.

THE CLERK: All rise. This is the United States Bankruptcy Court for the Northern District of California, with the Honorable Randall J. Newsome presiding.

Please be seated.

THE COURT: Good afternoon. This is Crown Vantage, Inc.; PACE International Union versus Crown Vantage, Inc., et al. And this is a hearing on a motion for clarification of preliminary injunction. Would you like to make appearances?

MR. RAISNER: Good afternoon, Your Honor. Christian Raisner on behalf of the plaintiffs and the moving parties.

MS. GERMANO: Hello, Your Honor. Judith Germano of Shearman & Sterling on behalf of defendants.

THE COURT: All right. I have been over all the papers – as a matter of fact, I went over them twice – and I have to say that, at this point, I don't know what the disagreement is.

I do understand that there is some question about the $600,000 and refund of employee contributions and whether that's appropriate. I also understand that there is some question about lump sum distributions, and $300,000 in expenses.

But as I understand it, this property interest, this $5.1 million, is presently being held in a trust account that I guess is in the name of the pension fund and thus is not subject to IRS complications in terms of excise taxes. So is it – are we [4] just left with the question of these three items and whether or not they're appropriately payable?

MR. RAISNER: Generally so, I think, Your Honor. There is – we've tried to look at it closely. We don't – we're not really in a position to examine what all of the – all of them are in detail. And I will assume that, you know, many of them are probably correct. I mean, there will be some administrative expenses and so forth.

We do have a concern that we don't believe that the plan should be charged for expenses of the breach and so on, as we've mentioned in our papers.

THE COURT: I understand that, and –

MR. RAISNER: And –

THE COURT: And I think it's appropriate at this point for me to perhaps give you some of my views about where we are in terms of this court's jurisdiction as to the matters at issue.

It is true that, as to property that is solely and exclusively the pension fund's, that this court probably – I think it's at least subject to argument as to whether or not I have jurisdiction over any disputes involving that particular fund, since all of this arose in the bankruptcy and thus may very well be a core proceeding.

But putting that aside, there is now no doubt at all that under Section 541(a)(7) of the Bankruptcy Code, the debtors have [5] an interest in property as to this reversion. And as such, I believe that I have jurisdiction to determine to what extent the debtors should be entitled to that particular interest in property versus the – whether the property should in essence remain a part of the pension fund, albeit in a different form and in a different vessel, if you will.

So I think I do have jurisdiction over this particular dispute to the extent that the debtor has an interest in the property that's involved here.

As for, however, the expenses of the trust fund, of the pension fund, that is, or the refund of employee contributions or the lump sum distributions that are discussed in the defendants' moving papers, I don't really believe I do have or should have jurisdiction over those matters, except to the extent that the defendants – that being Crown Vantage and Crown Paper – are seeking to assert that

they should be paid out of those – that reversionary interest, whatever it is.

So perhaps I should hear from the defendant at this point as to all of those matters. Defendants.

MS. GERMANO: Your Honor, we agree that what is at issue is the amount that remains after the annuity is paid. It's also after all of the benefits are paid.

Right now, the plans are still ongoing. There are still expenses with regard to those plans. And a lot of the numbers that the plans have been dealing with are still estimates. So [6] the amount that is currently in the account is not necessarily the final number.

THE COURT: I understand that. And I guess the other – the one thing I wanted to inquire about of the defendants – as I said, I've read the letters twice. And I just want to make sure that – is it the case that – or, will you provide the breakouts that Mr. Raisner has requested – or maybe it was Mr. Plotz; I think it was Mr. Plotz – requested by way of his letter to you? Recent letter; I don't remember the date. Are you – is there any problem with giving them the breakdown of who's going to get what in terms of refunds of employee contributions, etcetera?

MS. GERMANO: I believe Your Honor is referring to the December 27th letter.

THE COURT: Probably.

MR. RAISNER: That's correct.

MS. GERMANO: And there is not a problem in the long term. The immediate problem is that we don't have – the debtors do not have all of the final numbers yet.

THE COURT: All right.

MS. GERMANO: And an hour ago, we had a call with Mr. Plotz, and Mr. Raisner was there just for the beginning of it. And we did discuss what some of the questions are of the fund. And we are discussing the information that we have, but we do not yet have final numbers.

[7] THE COURT: All right. When do you think you're going to have them?

MS. GERMANO: That's a question I'm actually not sure of. It may take some time to make sure that everything is finally paid out. The $600,000 –

THE COURT: Uh-huh.

MS. GERMANO: – that he asks about, and the, you now, December 17th letter, that's in the case of a reversion. But at this point, we don't yet know if there's going to be a reversion or if in some other way the money will go from the account to the beneficiary. And that's what we were hoping to get more guidance from plaintiffs on, as to how that may happen. So the $600,000 may not occur. It depends what happens in the – how the funds are paid out.

THE COURT: Well, you know, I wanted to mention something about that, because, Mr. Raisner, in your papers, you say, "Well, they only get that in the case of a reversion. They may not be entitled to it if somehow this money is folded into another plan." Don't you think the employees ought to have some say about that?

MR. RAISNER: Your Honor, the issue as we see it is this. ERISA provides – these monies, the $600,000

portion, is not benefits. Benefits, including benefits based on all employee contributions, must be fully paid under the statute 4044 before you even get here. And this provision really is at the [8] tail end, after all benefits have been – all benefits, liabilities, have been fully accounted for. Then the statute contemplates, "Well, what about the, you know, the residual assets?"

THE COURT: Right.

MR. RAISNER: And these residual assets, it's simply provision that says, "Well, before there is any reversion to an employer, let's have an additional reversion that goes based upon the contributions." But it's not – it's in addition to benefits. It's a little bit odd, but if one – until one thinks about, well, the situation with a defined contribution type of arrangement or 401(k) plan, you may put your money in there and invest it and hope for the best, but you might not get the – you know, there might be investment experience. It might be very large, it may not, depending on what the time is and the condition of the market and so on.

And that's quite different from a situation where the plan may also guarantee certain benefits, and it may guarantee benefits based upon those contributions. But that's different than getting, you know, the full amount that might have accrued as a result of the contribution.

And we puzzled over it for quite a while to try to figure this out, but the statute really makes it quite clear, if you follow it step by step, how the distribution of any residual assets should take place.

And so we're not trying to be heartless here or anything, [9] but $600,000 is a lot of money, and all of the

people are participants that we're contemplating that it be – that the money that's surplus go to, not simply some. So this is a reversion like others. We don't know who they are, where they're from, what positions they occupy and so forth, but we're simply looking at the statute.

More importantly, it appeared that the entire plan of distribution as set up was really one that was designed at the time of the breach, quite frankly. It dates back to the time of the purchase of the annuities, and it was never adjusted or changed.

THE COURT: Well, I don't know, I mean, –

MR. RAISNER: And at that point, we needed to have it.

THE COURT: I don't want to get wrapped up in an argument about whether or not these numbers are right or some other set of numbers is right or whether they should be adjusted. But I can tell you, let me just say even though I don't have, I don't think, subject matter jurisdiction to determine how the pay-out ought to go from this pension plan, if I have anything to say about it, and if in fact the statute can be read more than one way, those employees are going to get their contribution back before anybody gets anything. That includes PIUMPF or any other employee pension plan or any other employee benefit plan. Because I just think that's what's right. And if in fact the statute allows that to happen, then that's – if I have anything to say about it, that's what's going to happen. So I just [10] want everybody to be on notice that that's the way I feel about it.

Now, let's talk a little bit, because the papers made it somewhat clear, that people are talking – this is like two

trains passing in the night here in terms of the parties talking to one another. It's not even clear to me that we really even needed to have a hearing on this today based upon the last round of letter briefs.

How long does – do the defendants think it's going to take to get to the point where they're ready to do something in terms of paying these amounts, this $1.4 million, and then dealing with the reversion?

MS. GERMANO: I think that it may be two months before all of the liabilities are owed – or that, you know, what is now merely estimates are made into final numbers and then the benefits are all paid out. It could be two to three months. And at that point, everyone who would be entitled to the money would get the money from the beneficiary standpoint, and then we could deal with what amount is left over.

One concern is that there's additional litigation going on –

THE COURT: I understand that. There's an arbitration proceeding, as I understand it, that's been apparently requested under the collective bargaining agreements. Is that right, Mr. Raisner?

[11] MR. RAISNER: That's correct, Your Honor. That's not a part of this.

THE COURT: Now, where I'm leading with this is – and am I correct in understanding that the defendants have now consented to having my ruling on the preliminary injunction also be deemed a ruling on the merits?

MS. GERMANO: Yes, Your Honor.

THE COURT: All right.

MR. RAISNER: Well, Your Honor, as to that matter, we learned of their position shortly before the hearing, I think about an hour and a half ago. And we were told that they did not consent as to all defendants. This is a serious concern, because we have –

THE COURT: Well, let's stop.

MR. RAISNER: Yes.

THE COURT: Are you consenting as to all defendants?

MS. GERMANO: Does the preliminary injunction ruling apply as to all defendants?

THE COURT: As far as I'm concerned, it did. I thought it did.

MS. GERMANO: Then we consent that it – that it's to all defendants.

MR. RAISNER: So long as the findings in that proceeding apply to all, because it's a very big issue.

THE COURT: Well, I don't – certainly, that's what I [12] intended. I – and, you know, frankly, at this point, the corporate forms are pretty much nothing more than formalities. I mean, you had one board of directors for Crown Vantage and Crown Paper. They also happened to be the trustees of the pension fund, some of them or all of them. And so as far as I'm concerned, it would – it did apply to all of them, and – all of the defendants, and I think we now have a resolution.

MR. RAISNER: Well, –

THE COURT: That that's the case, and that they've consented to the merit, this being on the merits under Rule 65.

MR. RAISNER: Well, Your Honor, if – just to make – try to make the record clear here, not all of the defendants have been served. We did request that service be accepted on behalf of all of them. I believe appearances were stated on the record in a manner that might not make that clear.

THE COURT: Who are all of the defendants? I don't have the most – I don't have a – I'm not sure I have a copy of the complaint here, –

MR. RAISNER: I have one.

THE COURT: – but are there others other than the two corporations?

MR. RAISNER: Yes.

THE COURT: The trustees of Crown Vantage pension plans. I see, George B. Ames, Robert – James S. Watkinson, E. Lee Showalder (phonetic), Robert Ola (phonetic), Donna Weaver, [13] and William Walsh and Evan Davis. Those are all the trustees, right?

MR. RAISNER: The trustees and the directors.

THE COURT: Right.

MR. RAISNER: And in both capacities. And also the plans'.

THE COURT: All right.

MR. RAISNER: So our effort was to sue the fiduciaries. And I'm concerned – we have a concern about

it in that if the record is clear that there's a consent to accept service on behalf of these persons, because, of course, we're told over and over that debtor is going to be no more very shortly.

THE COURT: Well, who's going to, I mean, – let's just leave it at this. I – whether they were served or they weren't served, clearly, they had notice of the complaint. Evan Davis, as an officer of the company and the general counsel, was charged with notice. One of the boards of – members of the board of directors appeared as a witness. I am deeming these people served, or as having notice of this complaint, even if they were never formally served. And I – the preliminary injunction is going to apply to all of them.

Now, is that clear enough? All right.

MS. GERMANO: Very.

MR. RAISNER: That seems to cover it. I'm trying – I'm attempting to predict – I'm aware – we're aware that their [14] time to appeal has not run.

THE COURT: Well, that's just it. Everybody is attempting to predict what the next move's going to be on the other side, instead of trying to work together to get this resolved. And again, that's where I was leading up to. I am ready at some point, if you can't get this resolved, to send this to a mandatory mediation, because enough's enough.

I've made my findings very clear, as clear as I can make them, although we'll have to return in a second to the question of modifying the preliminary injunction, because I think it's appropriate to do so, although perhaps not in exactly the form that the plaintiff had suggested.

But I just don't see a need for everyone to spend more money and time on this when it seems to me that this ought to be capable of resolution by mediation. And that's exactly what I intend to do before I have one more hearing on this matter.

So if in fact somebody brings another issue before me on this particular problem, this particular complaint, you can count on my trying to find another judge or somebody, and that I direct that you both – that both sides participate in a meaningful way in a mediation as to the disputes that are remaining. That's something else I wanted to make clear.

Now, is there some reason why we can't just say that the assets of the pension plan will remain in the trust account that they are presently residing in, which is a money market, as I [15] understand it, making two-plus percent, until further order of the court?

MR. RAISNER: That's certainly acceptable to us. We're not asking that the funds be moved out of anyplace.

THE COURT: Right.

MR. RAISNER: We just don't want them to be distributed without a court order.

THE COURT: Is that a problem for the defendants?

MS. GERMANO: Your Honor, would that mean, then, that before any amount being paid to any beneficiary, we would need to have the court's permission?

THE COURT: With the exception of the question of – well, let's go back. If you intend ultimately – after a mandatory mediation, I might add – to challenge a distribution from the pension plan, you're going to have to do it someplace other than here. Because I don't believe, as I've already indicated, that I probably have jurisdiction over this matter.

As to who's going to get what's left after those distributions, clearly, under 541(a)(7), that's property of the estate; I do have jurisdiction to decide that issue. But as to what the actual reversion's going to be in terms of expenses that are paid out, refund of employee contributions, and so forth, I don't believe I have jurisdiction.

However, I don't think there's anyone that would say that I can't require the parties to mediate those issues, and I'm going [16] to do that.

So let's rephrase what I just said. That the property, the reversion, the $5.1 million left in the plan, will be – remain in a money market fund subject to an agreement of the parties as to how expenses and the other items of distribution are to be made, prior to the reversion being made, or subject to a court of competent jurisdiction making such a finding as to the appropriateness of distributions before the reversion takes place. Something along those lines.

MS. GERMANO: Your Honor, our concern with that language is that it then puts PACE, or PIUMPF, as a co-administrator of the plan.

THE COURT: All right. What's your suggestion?

MS. GERMANO: If we could –

THE COURT: I haven't seen any language, and you said you wanted to suggest some language, so have you sent that to me and I just don't have it?

MS. GERMANO: No, we have not. Can I send something to you this evening?

THE COURT: You can send anything to me that you want, but it seems to me that before you send anything to me, you send it to Mr. Raisner.

MS. GERMANO: Okay.

THE COURT: And I will expect that the parties negotiate in good faith based upon what I have just said. Because [17] what I have just said I don't think is going to change.

Now, if you're concerned about Mr. – about the union being – I didn't say anything about them being – having their name on the account or anything else. All I said was that, subject to making appropriate distributions either by agreement of the parties or pursuant to a court of competent jurisdiction making findings as to the appropriate distributions, that that money should stay in the account. I didn't say anything about the union becoming a co-trustee or the union having to be a signatory on the account or any of the rest of that, because obviously if you move any money in violation of this order, that's going to be a real problem for the – well, for the defendants in this case as well as for the attorneys for the defendants. So I don't have a problem with not putting them on any of the trust documents or the money market account.

MS. GERMANO: Right. Our concern is just that if they don't agree, for example, that our beneficiaries are owed a certain amount of money, and we feel that as plan

administrators it's required to pay out that money, then we would have to get the union to agree or go to another court and litigate it.

THE COURT: Well, and – that may be, but before you do you're going to go to mediation. I can tell you that right now. Regardless of whether I have jurisdiction to decide that issue or not, you're going to go to mediation on that before anybody sues anybody again on anything.

[18] MS. GERMANO: Okay.

MR. RAISNER: Your Honor, if I may, one small scruple respecting the order, which we would agree with, with the small provision that I'd like the record to be clear that the order is not assuming that a reversion – because it's a term of art – that a reversion will occur.

THE COURT: All right. That's – obviously, everybody has an interest in avoiding the excise tax problem, and so that's fine. That's the sort of thing that everybody could agree on, I hope.

Well, why don't you suggest some language, counsel, and send it to Mr. Raisner, and then you two work on it? I'm going to be out of town from Friday of this week until the 22nd of January. So I won't be available to sign anything until then, but it doesn't sound to me like there's any urgency to this at this point anyway.

MR. RAISNER: Well, Your Honor, if I may speak to that briefly. As a technical matter, and it does relate to the jurisdictional issue, one of our worries is that the defendants' letter, letters, both of their letters, have taken the position that after January 9 the – they can distribute the money as they see fit.

THE COURT: They've already said, Mr. Raisner, that there's no way they can make a distribution. They don't even know who they're supposed to distribute it to, apparently, or [19] how much it's supposed to be. They don't have a set of final numbers. There's not going to be anything happening on January the 9th. Is that correct, counsel?

MS. GERMANO: That's my understanding, Your Honor.

THE COURT: Well, that's what I'll expect, that nothing's going to happen on January the 9th, and that nothing's going to happen until the other side has received notice.

MS. GERMANO: Okay.

THE COURT: If you want to put that in the order, you can put that in the order too.

MR. RAISNER: If we may have an opportunity to be heard before the distribution, that would, I think, get us where we need to go.

THE COURT: Well, as long as everybody understands, as long as you understand, you may have an opportunity to be heard but it won't be here necessarily, by any means. You may have to go file another lawsuit against these people for this, if you insist. But I don't think I have jurisdiction over the trust fund assets to the extent that the trust fund assets are going to somebody other than these defendants.

MS. GERMANO: Your Honor, something that perhaps could work is if we had language that the estimated amount of any assets that will remain in the

pension trust after the distribution of other assets in accordance with ERISA and the terms of the pension plans, and that including –

[20] THE COURT: You work on it with Mr. Raisner. I'm not going to try to craft an order at this point, because I've already tried to craft an order and nobody liked the last paragraph of it. So you work on it. And I'll expect, frankly, that this get resolved, because I can't imagine why it shouldn't be.

Now, is there anything else I need to deal with this afternoon?

MR. RAISNER: Your Honor, on the issue of jurisdiction, if you would accept it, we would submit a brief on that issue.

THE COURT: Well, you can submit anything you want, –

MR. RAISNER: We believe the court does have a jurisdiction –

THE COURT: – but I'm not going to decide anything because I don't have it before me right now, and clearly the pension fund itself is a separate entity, governed by ERISA, governed by other statutory provisions, and I'm not going to – you can submit all the briefs you want but right now I've got nothing to decide.

MR. RAISNER: Very well. The – I will point out that –

THE COURT: First you have to file the lawsuit, and you can try to file it here, and then it'll get teed up for

– on the question of subject matter jurisdiction by way of a motion to dismiss under 12(b)(1), presumably, by them.

[21] MR. RAISNER: We have looked into that. The – just the technicalities I have to be concerned with is the plans that are involved here are in fact named parties. They are defendants.

THE COURT: That doesn't –

MR. RAISNER; And so it would seem to me that the order flows as to them. I mean, this is –

THE COURT: It flows as to them only to the extent that the pension plans are purporting to pay the other defendants anything. Whether or not – if you want to file a lawsuit in bankruptcy court as to the distributions that are at issue here and see whether or not they file a motion to dismiss under rule 12(b)(1) and then get a ruling from me as to whether I have jurisdiction, that's up to you, but it seems to me that that ought to be the last absolute resort that anyone makes here. Enough's enough.

I mean, I've made a ruling here. I thought it was comprehensive. I may – I was dead wrong about where the money was coming from, but that's partly because nobody explained to me how the reversion was going to work. But I think that the rest of this really ought to be something that if you can't agree on it at least ought to be susceptible to some sort of a mediation.

Anything else?

MS. GERMANO: We'll send proposed language –

MR. RAISNER: Nothing else, Your Honor. Thank you.

[22] THE COURT: What? Excuse me?

MS. GERMANO: We'll send proposed language –

THE COURT: Very good.

MS. GERMANO: – to plaintiff tomorrow and – discussion.

THE COURT: All right.

MS. GERMANO: Your Honor, the only other matter is that on either the 10th or the 11th, we were to submit to you proposals for what can be done with the –

THE COURT: Right.

MS. GERMANO: – money. Defendants were hoping to get something from plaintiff from which we could work in terms of the options that PACE and PIUMPF have for reaching these beneficiaries. We have not yet done that. We have not yet received anything from them. Should we still try to come up with something in a vacuum, or may we have more time to get something –

THE COURT: Well, that's fair enough. When are you going to get your proposal to them?

MR. RAISNER: Well, we had hoped to get some information from them which we thought would help, and I don't want to –

THE COURT: Well, let's – here we go again. It's, "Well, I want something from you, but I – "

MR. RAISNER: No, we are prepared to submit our proposal timely, –

[23] THE COURT: All right.

MR. RAISNER: – and we'd be happy to share it. It's not ready yet. It certainly will be ready by Thursday.

THE COURT: Good.

MR. RAISNER: And –

THE COURT: Then you submit yours by Thursday, and is there some reason why you can't submit something to – if I give you an extension till the following Thursday, for you to submit something by that time? In other words, for you to submit something by January the 17th?

MS. GERMANO: That would be fine, Your Honor.

THE COURT: All right.

MR. RAISNER: Your Honor, may I suggest that we take the occasion of the brief extension, we'll submit our proposal to them on Thursday – which is simply the soonest that we can get it done; we have people working on it – and then try to work out a joint proposal to make?

THE COURT: That would be wonderful. I have no illusions that that's possible at this point, but that would be wonderful.

MR. RAISNER: Well, I actually think it may – will be possible, based upon the ruling

THE COURT: Well, good.

MR. RAISNER: And –

THE COURT: Maybe you can get a stipulation on every[24]thing. But at this point, I'm not – I wouldn't bet on it. So I'll leave it at that.

Anything further to come before the court at this time?

MS. GERMANO: Not from defendants, Your Honor.

THE COURT: All right. Well, thank you very much, and we will stand adjourned for the day.

(Proceedings concluded at 2:29 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Kathy Rehling, Transcriber Date

APPENDIX 8
Section 12 of Crown Pension Plan No. 7, *included as* Appellant's Excerpts of Record, Vol. I, Tab 6 (No. 02-01407, N.D. Cal., filed Oct. 18, 2002)

SECTION 12.

Amendment or Termination of Plan

12.1 *Amendment.* The Company and the Plan Administrator intend, subject to the rights of amendment and termination contained in this Section 12, that this shall be a permanent plan for the exclusive benefit of the Employees who become Participants. The Plan Administrator may amend the Plan from time to time or terminate the Plan at any time, by written resolution of its Board of Directors (or the Executive Committee of such Board), but the Company shall not benefit thereby, as provided in subsection 10.4 and the Trust Agreement, and the duties or liabilities of the Trustee or insurance company shall not be increased without its written consent. The Plan Administrator reserves the right to amend, modify, or terminate the Plan at any time and from time to time, provided that the Plan Administrator shall have no right to amend, modify, or terminate the Plan in such a manner as would cause or permit any part of the Retirement Fund to be diverted to purposes other than for the exclusive benefit of the Member or, except as otherwise permitted by law, would cause or permit any part of the Retirement Fund to revert to the Company, and provided further that the duties or liabilities of the Trustee or insurance company hereunder shall not be increased without its written consent.

12.2 *Termination.* The Plan will terminate as to any group of Members upon the first to occur of the following:

(a) The date it is terminated by the Plan Administrator if thirty days' advance written notice of the termination is given to the Trustee.

(b) The date the Company is judicially declared bankrupt or insolvent.

(c) The dissolution, merger or consolidation of the Company or the sale by the Company of all or substantially all of its assets, except that in any such event arrangements may be made whereby the Plan as applied to the Company or to a group of Members of the Company will be continued by a successor to the Company or by the purchaser of all or substantially all of the Company's assets, in which case the successor or purchaser will be substituted for the Company under the Plan.

12.3 *Distribution on Termination.* In the event of the termination or partial termination of this Plan, the applicable portion of the Retirement Fund then held by the Trustee or insurance company shall be used and applied subject to the provisions of the Trust Agreement or insurance contract for the benefit of Members affected by such termination who have retired under the Plan (including a Member's spouse or beneficiary, if any) and Members who at the date of such termination are included in the Plan, in the following order:

First: That portion of the assets then held in the Retirement Fund allocable to the funding for the death benefits under subsection 8.3, as determined by the Actuary for the Plan, based upon records maintained with respect

to the contributions made to provide for the death benefits, the death benefits paid, and the proportionate allocation of Retirement Fund income, expense, and investment gains and losses thereto, shall be determined, and allocated to the extent that such portion of such assets shall be sufficient to provide the death benefits under subsection 8.3 to retired Members who shall have retired under the Plan prior to its termination proportionate to, but not in excess of, the actuarial liabilities for such death benefits without reference to the order or retirement.

Second: The balance of the Retirement Fund shall be allocated to provide for each Member an amount which is the Actuarial Equivalent of the total of his own contributions plus Credited Interest to the date of termination of the Plan less any retirement benefits theretofore received by him.

Third: The balance of the Retirement Fund shall be allocated to provide all or that part of his benefit payable under the Plan for each Member (or his spouse or beneficiary) who either:

(1) has begun to receive benefit payments at the date which is three years prior to the date of termination of the Plan, or

(2) could have begun to receive benefit payments at the date which is three years prior to the date of termination of the Plan if the Member would have been eligible to retire under subsections 4.2, 4.3

or 4.4 prior thereto and begin to receive benefit payments three years prior to the date of termination of the Plan,

which is equal to the smallest benefit (he was receiving or could have received) which would be provided for such person under the Plan based on its provisions as in effect during the five-year period ending on the date of termination of the Plan; and for this purpose the lowest benefit payment received under (1) above during the three years prior to the data of termination of the Plan shall be considered to be the benefit he was receiving at the date which is three years prior to termination, of the Plan. Allocation shall be made on a pro rata basis based on the then present value of the benefits under this paragraph Third, if assets are not sufficient to provide such benefits in full.

Fourth: The balance of the Retirement Fund shall be allocated to provide all or that part of his benefit under subsections 4.2, 4.3, 4.4, 6.3, 7.3 and 9.2 hereunder which is guaranteed under Section 4022 of the Act for each remaining Member (or his spouse or beneficiary) who qualifies under Third above but all of his benefit is not provided thereunder, or who does not qualify under Third above but who either:

(1) Has begun to receive benefit payments later than three years prior to the date of termination of the Plan, or

(2) Could have begun to receive benefit payments at the date of termination of the Plan if the Member would have been eligible to retire under subsections 4.2 or 4.3 or 4.4 or 6.3 or 7.3 at the date of termination of the Plan and be eligible to receive benefit payments thereunder, or

(3) Had attained eligibility for a termination benefit under subsection 9.2 at the date of termination of the Plan and would have been eligible to terminate his employment at the date of termination of the Plan and be eligible to receive termination benefit payments under Section 9.2 of the Plan.

Allocation shall be made on a pro rata basis based on the then present value of the benefits under this paragraph Fourth if assets are not sufficient to provide such benefits in full.

Fifth: The balance of the Retirement Fund shall be allocated to provide all or that part of his benefit hereunder for each Member (or his spouse or beneficiary) described in Third and Fourth above, which is not provided for under Third or Fourth above, in the following order of priority if such remaining assets are not sufficient to provide all of such part of such benefits for all such persons:

(1) To provide such part of the benefits which would be provided for such persons under the Plan based on

its provisions as in effect at the beginning of the five-year period ending on the date of termination of the Plan; and on a pro rata basis based on the then present value of such benefits under this paragraph (1) if such assets are not sufficient to provide such benefits described in this paragraph (1) in full; provided, however, if such assets are more than sufficient to provide such benefits described in this paragraph (1) in full then the assets available under this paragraph Fifth shall be allocated as provided in (2) below.

(2) To provide such part of the benefits which would be provided for such persons under the Plan based on its provisions as in effect as amended by the most recent Plan amendment effective during the five-year period ending on the date of termination of the Plan under which the assets under this paragraph Fifth are sufficient to provide such benefits in full; and with any assets remaining thereafter to be allocated to provide such part of the benefits which would be provided for such persons under the Plan based on its provisions as in effect as amended by each next succeeding Plan amendment effective during such five-year period.

Sixth: The balance of the Fund shall be allocated to provide all other benefits hereunder for each

Member which are not provided for above, accrued to the date of termination of the Plan, and in the order of priority described in Fifth (1) and (2) above if assets are not sufficient to provide such benefits in full.

Seventh: If any assets remain, they shall first be allocated to other groups of Members of the Company, if any, and if any assets remain thereafter they may revert to the Company as provided in subsection 10.4(a) hereof only if the Company has no other groups of Members remaining in the Plan.

Notwithstanding the foregoing, in the event the Plan terminates, or there is a spinoff of part of the Plan (in excess of the 3% of the assets permitted under Regulation Section 1.414(l)-1(n)(2)), within five years following the date of any merger of another plan into this Plan, and if the sum of the assets of this Plan after any such merger was less than the sum of the present values of the accrued benefits (whether or not vested) of both plans on a termination basis on the merger date, then a special schedule of benefits shall be created from the necessary (as identified by an enrolled actuary) data maintained by the Company and shall be inserted in and modify the allocation priorities set forth above in this subsection at the time of such Plan termination or spin-off, in accordance with Regulation Section 1.414(1)-l(e) through (j) and Regulation Section 2608.13.

12.4 *Form of Distribution.* The benefits from the allocations provided for in subsection 12.3 when made shall be fully vested and nonforfeitable as of the date of termination of the Plan, and any distributions from the Retirement Fund required to be made in accordance with

the foregoing paragraphs may be effectuated in the discretion of the Plan Administrator by the purchase of non-transferable annuities, or by continuing the Retirement Fund in existence, or by a cash settlement with any Member with the Member's consent.

12.5 *Merger or Consolidation.* In the event of and effective as of the date of merger or consolidation of the Plan with, or transfer of assets and liabilities of the Plan to, any other employee benefit plan, each Member in the Plan will (if the Plan had then terminated) receive a benefit immediately after the merger, consolidation or transfer which is not less than the benefit the Member would have been entitled to receive immediately before the merger, consolidation or transfer (if the Plan had then terminated).

12.6 *Sale of Company or Business Unit.* If the stock or assets of the Company, an Affiliate, or a business unit of the Company or an Affiliate are sold, the accrued benefits of Plan Members who are employees of the affected Company, Affiliate, or business unit may be transferred to a tax-qualified retirement plan of the purchaser. The transfer of assets shall be in full satisfaction of this Plan's obligation to provide benefits to the affected Members and their beneficiaries. The transfer will be made in compliance with applicable law.

APPENDIX 9
***Excerpts from* Transcript of Proceedings: Oct. 4, 2001, Hearing on Disclosure Statement & Motion on Procedures, *included as* Appellees' Supplemental Excerpts of Record, Exhibit 1 (No. 02-01407, N.D. Cal., filed Nov. 13, 2002)**

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

(OAKLAND DIVISION)

In re:

CROWN VANTAGE CROWN PAPER, INC.	Case No. 00-41584 N 00-41583 n (Jointly Administered)
	Chapter 11
	Oakland, California October 4, 2001 10:00 a.m.
Debtors. /	

TRANSCRIPT OF PROCEEDINGS
1) HEARING ON DISCLOSURE STATEMENT
2) MOTION ON PROCEDURES

(Filed Oct. 22, 2001)

BEFORE THE HONORABLE RANDALL J. NEWSOME
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: SHEARMAN & STERLING
BY: FREDRIC SOSNICK, ESQ.
599 Lexington Avenue
New York, New York 10022

[2] For Pace International:	VAN BOURG, WEINBERG, ROBER & ROSENFELD BY: JOHN PLOTZ, ESQ. 180 Grand Avenue, Suite 1400 Oakland, California 94612
For the Creditors' Committee:	AKIN, GUMP, STRAISS, HAUER, & FELD, LLP BY: IRA S. DIZENGOFF, ESQ. 590 Madison Avenue New York, New York 10022
For Fort James:	SHEPPARD MULLIN BY: JOSEPH F. COYNE, JR., ESQ. 333 South Hope Street, Suite 4800 Los Angeles, California 90071
Court Reporter:	PHYLLIS L. WRIGHT UNITED STATES BANKRUPTCY COURT 1300 Clay Street. 3rd Floor Oakland, California 94612
Transcription Service:	Jo McCall Electronic Recording/Transcribing 3946 Pyle Avenue Santa Rosa, California 95407 Telephone: (707) 545-1838

* * *

[9] MR. PLOTZ: My name is John Plotz. I'm the [10] attorney for Pace International. Pace International as such, probably – it is not clear whether we represent the retirees or not, but certainly we, as a practical matter, can and I believe already have, gotten any number of retirees to sign up with us to represent them. And I just would like to – I was going to save this for a little bit later, but I think this may be the time to bring it up.

The Disclosure Statement and the proposed Plan say it's beyond impenetrable on what happens with the 18 ongoing and frozen pension plans. There is no plan here. It says the Debtors are analyzing whether some or all the plans, you know, can be merged or can be terminated voluntarily, involuntarily; we don't know what this is. I understand that. I mean I understand that negotiations have been going on with the Union about these plans. I was under the impression that they were successful negotiations, but I think nothing has been finalized.

But in any case, this Plan – I mean the piece of paper that is in front of the Court and was given to us, is a non-plan as far as the pension plans are concerned. And we are concerned that, you know, before there's a confirmation hearing with adequate time, assuming that there is no final agreement with the Union signed, sealed and delivered, we would like the Plan as to the pensions laid out in detail with the information backing it up so [11] that we can intelligently evaluate it.

THE COURT: Well, isn't it true – and I'm on real thin ice here talking about this – but isn't it true that those plans, those pensions plans, at least, cannot be wrapped up without the approval of the PVGC?

MR. PLOTZ: That's correct, Your Honor.

THE COURT: So whatever has to be done has to be done in accordance with PVGC rules and the statute, so doesn't that in essence protect the rights of your people you're representing?

MR. PLOTZ: Not entirely. It protects them insofar as the minimum standards that, you know, PVGC is looking for, but in the first place, we have to – this is a

bankruptcy proceeding; the Debtors in Possession need your approval, as I understand it, to take any action, at all in terms of the pensions. I mean, they are not only bankrupts but they're also the plan sponsor and have fiduciary duties towards the plan participants.

So as I understand it, subject to correction of course, is that the Debtors here have to go through two – leap over two hurdles. First, is this Court; and the second is PVGC. Obviously anything that is crafted here would be done with the notion that Gee, we have to go to PVGC; it's got to be acceptable to them down the line. And there's always the possibility that for some reason, [12] they'll put the kibosh on it. But in the meantime, the first step is, we need to get this Court's approval and preparatory to that, as a practical matter, there ought to be an agreement between the Union and the Debtors as to what's going to happen with these things. I believe that we're going to have it, actually.

THE COURT: I guess that – my question is, whether or not it's – it's not a question of agreeing with the Union; it's a question of complying with the terms of the pension plan; isn't it?

MR. PLOTZ: Yes. We agree with that totally.

THE COURT: So whether the Union agrees or doesn't agree, the fact is they have to comply with the pension plan, and they have to comply with the Bankruptcy Code, and they have to comply with ERISA and whatever else is governing law.

MR. PLOTZ: That's utterly correct, Your Honor, and I guess the bottom line on this point is that this piece

of paper doesn't explain how those three things are to be accomplished.

THE COURT: Well, maybe – you know, in the interest of simplicity, maybe that's what the Disclosure Statement should say is that the pension plans will be dealt with in accordance with the provisions of ERISA, the terms of the plan, and the Bankruptcy Code. And that's [13] probably about all that any – without making this even more difficult to understand – that's probably about all that can be expected in this document, I would think.

Mr. Sosnick, I'll let you be heard.

MR. SOSNICK: I think that's absolutely right, Your Honor. We can certainly put that additional sentence in it if that helps clarify. But the reason why it's not dealt with specifically in the Plan, other than by way of just disclosure, is here's what's happening because it doesn't affect the distribution one bit under the Plan. The fact is they're not Crown assets; they're not Crown Paper's assets. Crown Paper is acting as a fiduciary because they're Plan sponsor.

But if, for example, we were to come to the Court and say, Your Honor, here's what we'd like to do. We'd like to merge all the plans, and assume, let's say, that PVGC says that's fine, but Your Honor had a different view that you don't want us to merge the plans; you want us to do something else with them. In no way would that ever affect any distribution to anyone because those are all just Plan assets, and the plans are not – these are not over-funded plans. There's no –there's no –

THE COURT: Are they under-funded plans?

MR. SOSNICK: They are under-funded plans, and that's the struggle of how to deal with the PVGC on what to [14] do with these things. And one of the proposals that Mr. Plotz has alluded to is that the Union for the salaried plan – I'm sorry for the hourly plan, has their own pension plan, and one of the things that we're looking to do is to not in fact terminate the plans which may have some adverse consequences to the participants, but to try to merge them into the Union plan which we think would help, you know, benefit them.

But in no way, does any of this – any of these things help Crown Paper or its creditors, other than it's just taking – there's a trust fund. There's no – there's nothing really to say more in the Disclosure Statement or in the Plan, because it doesn't affect it.

THE COURT: Well maybe my suggestion then isn't so simpleminded after all. Maybe that's the way to handle it , because that's certainly the way it's going to be.

MR. PLOTZ: Your Honor, I don't disagree with anything that's been said. I'm having a little bit of a conceptual problem here. The Debtors have certain responsibilities towards the participants. The Debtor is in the role of Plan sponsor. Admittedly, truly, I mean I agree that nothing that the Debtors do is going to affect this bankruptcy in the sense of bringing more money in. However, there the Debtor is, having to make decisions in the real world. Are we going to do it this way, this way, [15] or the other way. The Debtors are in the jurisdiction of this Court.

THE COURT: Right. So we could add to the statement I've already made that they must comply with the Bankruptcy Code, the provisions of the pension plan,

all other applicable Federal and State law, subject to determination for compliance purposes of the Bankruptcy Court.

MR. PLOTZ: Right.

THE COURT: Well maybe that's the way it ought to be, certainly not in that phraseology but you get the drift.

MR. SOSNICK: Absolutely.

MR. PLOTZ: So that – yes, just to be finally clear and then I will sit down and let this bankruptcy proceed –

THE COURT: Okay.

MR. PLOTZ: – what will happen is that before an action is taken as to these pension plans, what that action is will be stated with, you know, information to evaluate it –

THE COURT: On notice –

MR. PLOTZ: – present it to this Court, and we'll have a chance to say –

THE COURT: Right.

[16] MR. PLOTZ: – yes, that's swell or not.

THE COURT: Okay.

MR. PLOTZ: Thank, Your Honor. Thank you, Mr. Sosnick.

THE COURT: Why don't we just put that into the Disclosure Statement, and I think that would be very helpful and that will get us over that hurdle.

MR. SOSNICK: We'd be happy to, Your Honor.

THE COURT: But I still want that letter obviously from the Creditor's Committee, and I want it – I don't want it to be one word longer than a page, because people won't read more than a page. It can be single-spaced, but it still has to be just a page. All right?

MR. DIZENGOFF: We'll do our best, Your Honor.

THE COURT: No, I'm serious about that. I don't want it more than one page long. So this is really going to be a challenge for the lawyers involved to write a one-page letter. All right?

MR. PLOTZ: May I offer my firm's editorial assistance if desired. I mean that seriously, because we bill these folks, and if you'd like –

THE COURT: Well am I wrong about what I'm saying? Am I –

MR. PLOTZ: You're absolutely right, Your Honor, a hundred percent right.

[17] THE COURT: Okay. One page, and I'm serious about that, not one word longer than one page, and it can't be in microscopic font either. It's got to be in 12 point font. And it can't be on 14-inch paper.

(Laughter.)

All right.

MR. SOSNICK: Covered all the tricks.

THE COURT: No –I doubt it. Not for a minute would I think that. All right. Mr. Sosnick, you want a confirmation hearing after 11-5-01?

MR. SOSNICK: Correct, Your Honor. Well actually, in calculating the dates, we think we would propose as having the voting deadline – by the time we get it out, we expect to get the Plan distributed by next Friday, which is October 12th, so we would expect a voting deadline of November 9th. And therefore we would hope to have a confirmation hearing on or about the 15th of November.

THE COURT: All right. Let's see what I can do for you. The 15th will not work. I can tell you that almost certainly. At least I can't give you a firm obligation or commitment, I should say, on the 15th. I may or may not be in town, but I can give you, let's see, a firm obligation – oh dear – at 2:00 o'clock on Tuesday November the 20th. That's the day – that's two days before [18] Thanksgiving, but at least it's not the day before Thanksgiving.

MR. SOSNICK: Would Your Honor have any earlier dates? The issue is that the way the – we don't start to get any money in from the banks holding the rest of the money until the Plan is confirmed.

THE COURT: Well, I don't have that week available – at least not yet. And you need to have a firm date and so – I could give you November the 19th at 2:00 o'clock.

MR. SOSNICK: That's fine, Your Honor.

THE COURT: All right. There are no obligations to this Disclosure Statement. I have read it over as best I can. I am not – I don't want to – I would not want

to be quizzed on certain of the provisions of the Disclosure Statement. It would appear to me as though it does, however, more than adequately provide information upon which a reasoned determination could be made whether to accept or reject the Plan. And so accordingly, the Disclosure Statement is hereby approved under Section 1125 of the Bankruptcy Code.

MR. SOSNICK: Very well. Thank you, Your Honor. We – I guess what we propose to do is we'll make the changes that Your Honor has talked about. We also had one additional language change, where we are in working [19] capital. We've got a – we had a call yesterday from Tembec U.S.A., re the exact landscape of that movant, to put in an additional sentence on that, and we could submit that to the Court by tomorrow.

THE COURT: All right. Well, just submit the order. Now, if the 19th is going to be the day, then it seems to me – let's set a firm date of November the 12th for the dates for ballots and objections. That's a week – obviously seven days before, approximately – I guess that's five business days. I'm not sure how you count them, but that's close enough.

MR. SOSNICK. Right. Okay.

THE COURT: So November the 12th will be for objections and ballots. The confirmation hearing will be November the 19th at 2:00 o'clock. There was another date in there, and I don't remember what it was.

MR. SOSNICK: That was the – that was the record date –

THE COURT: Right.

MR. SOSNICK: – which we would propose to be today, which is the date that we used to determine to send solicitation packages out.

THE COURT: All right. Fine.

* * *

APPENDIX 10
Minutes of Aug. 28, 2001, Meeting of Crown Vantage, Inc. Board of Directors, *included as* Appellees' Supplemental Excerpts of Record, Exhibit 2 (No. 02-01407, N.D. Cal., filed Nov. 13, 2002)

CROWN VANTAGE, INC.

Board of Directors

August 28, 2001

The Board of Directors of Crown, Vantage Inc. held a meeting by telephone conference call, chaired from the home of George James, 207 Walnut Street, San Francisco, California, on Monday, July 30, 2001 at 11:45 a.m. Eastern time. Present by telephone were Directors Messrs. George B. James (Chair), James S. Watkinson, F. Lee Showalter, Robert A. Olah, Ms. Donna Weaver, and Mr. William Walsh. Also present by telephone was Mr. Evan C. Davis, Senior Vice President Administration and General Counsel/Secretary.

Mr. James served as Chairman of the meeting and Mr. Davis kept the minutes of the meeting.

Quorum

The meeting was called to order by Chairman James, who noted a quorum was present. Chairman James reminded the Board that, when appropriate, the Board would be acting as the Board of Directors of Crown Paper Co., a wholly owned subsidiary of Crown Vantage, Inc.

Mr. Davis, at the request of the Chair reviewed the current status of the Company and the progress in the bankruptcy proceedings.

[REDACTED]

Pension Plans

The Union has offered to consider taking on all of the hourly pension plans into PIUMPF, the union multi employer plan. They are reviewing the data and will be notifying us if this is acceptable. Since this would be a favorable alternative we are delaying the quotes on annuities that are presently being developed until this is resolved.

[REDACTED]

Adjourn

There being no further business, and on motion duly made and seconded, the meeting was adjourned at 12:45 p.m.

/s/ Evan C. Davis
Evan C. Davis, Secretary

APPENDIX 11
Minutes of Sept. 26, 2001, Meeting of Crown Vantage, Inc. Board of Directors,
***included as* Appellees' Supplemental Excerpts of Record, Exhibit 3**
(No. 02-01407, N.D. Cal., filed Nov. 13, 2002)

CROWN VANTAGE, INC.

Board of Directors

September 26, 2001

The Board of Directors of Crown Vantage Inc. held a meeting by telephone conference call, chaired from the home of George James, in Hawaii on September 26, 2001 at 3:00 p.m. Eastern Time. Present by telephone were Directors Messrs. George B. James (Chair), James S. Watkinson, E. Lee Showalter, Ms. Donna Weaver, and Mr. William Walsh. Also present by telephone was Mr. Evan C. Davis, Senior Vice President Administration and General Counsel/Secretary and Robert Cicero of Shearman & Sterling.

Mr. James served as Chairman of the meeting and Mr. Davis kept the minutes of the meeting.

Quorum

The meeting was called to order by Chairman James, who noted a quorum was present. Chairman James reminded the Board that, when appropriate, the Board would be acting as the Board of Directors of Crown Paper Co., a wholly owned subsidiary of Crown Vantage, Inc.

Mr. Davis, at the request of the chair reviewed the current status of the Company and the progress in the bankruptcy proceedings.

[REDACTED]

Pension Plans

The Union has offered to take all of the hourly pension plans into PIUMPF, the union multi employer plan. This offer will be evaluated in comparison to the annuitization of plans when we receive final bids from the annuity providers. The final bids are anticipated on October 9, 2001. The following resolution was proposed and unanimously passed to facilitate the purchase of annuities if that is the most attractive alternative.

Resolution Regarding Negotiations for Annuity Contracts

WHEREAS, Crown Vantage Inc., a Virginia corporation (the Corporation) maintains for the benefit of its employees, the Crown Vantage Inc. Retirement Plan for Salaried and other Non-Bargaining Unit Employees. Crown Vantage Inc. Pension Plan No. 4, James River Pension Plan 1 – Supplement 1. Crown Vantage Inc. Pension Plan No. 7, Crown Vantage Inc. Pension Plan No. 10, Crown Vantage Inc. Pension Plan No. 11, Retirement Plan for Bargaining Unit Employees of Crown Vantage, Inc. at Richmond, Retirement Plan for Bargaining Unit Employees of Crown Vantage Inc. at Peninsular, Retirement Plan for Bargaining Unit Employees of Crown Vantage Inc. at Adams, Retirement Plan for Bargaining Unit Employees of Crown Vantage Inc. at Milford, Retirement Plan for Employees of Crown Vantage Inc. Rep. UPIU No. 1017 Port Huron, Crown Vantage Inc. Frozen

Pension Plan No. 4 and Frozen Retirement Plan for Bargaining Unit Employees of Crown Vantage Inc. at Peninsular (collectively referred to as the "Pension Plans"); and

WHEREAS, the Corporation intends to terminate the Pension Plans at a future date; and

WHEREAS, the Corporation may need to procure annuity contracts in order effectuate such termination and in order to provide benefits for participants in the Pension Plans;

NOW, THEREFORE BE IT RESOLVED, that the Secretary of the Corporation, subject to prior notification of the Board be, an hereby is authorized to take any and all actions that he may deem advisable in order to effectuate the procurement of annuity contracts to provide benefits for participants in the Pension Plans, including negotiating and purchasing such annuity contracts.

[REDACTED]

Adjourn

There being no further business, and on motion duly made and seconded, the meeting was adjourned at 4:00 p.m.

/s/ Evan C. Davis
Evan C. Davis, Secretary

APPENDIX 12
Minutes of Oct. 9, 2001, Meeting of Crown Vantage, Inc. Board of Directors, *included as* Appellees' Supplemental Excerpts of Record, Exhibit 4 (No. 02-01407, N.D. Cal., filed Nov. 13, 2002)

CROWN VANTAGE, INC.

Board of Directors

October 9, 2001

The Board of Directors of Crown Vantage Inc. held a meeting by telephone conference call, chaired from the home of George James, in Hawaii on October 9, 2001 at 4:30 p.m. Eastern Time. Present by telephone were Directors Messrs. George B. James (Chair), Robert Olah, James S. Watkinson, E. Lee Showalter and Ms. Donna Weaver. Also present by telephone was Mr. Evan C. Davis, Senior Vice President Administration and General Counsel/Secretary, Sandy Kester, Shaun Stuart of Dinsmore & Shohl and Robert Cicero of Shearman & Sterling.

Mr. James served as Chairman of the meeting and Mr. Davis kept the minutes of the meeting.

Quorum

The meeting was called to order by Chairman James, who noted a quorum was present. Chairman James reminded the Board that, when appropriate, the Board would be acting as the Board of Directors of Crown Paper Co., a wholly owned subsidiary of Crown Vantage, Inc.

Pension Plan Annuitization

Mr. Davis, at the request of the Chair introduced the subject of the annuitization of the Pension Plans that has been under consideration. We now have final quotations on the cost of this program and can make a decision.

Mr. Cicero then reviewed the information that had been previously faxed to the Board which documented several important factors to be considered in the choice of an annuity provider. By providing annuities to employees they receive the full benefits of the pension plans and the payment will be provided through the large insurance company. Our consultant assures us that all of the carriers under consideration are highly rated, well funded and qualified for this purpose.

A discussion was held comparing the various insurance companies regarding their capitalization, exposure to casualty loss in view of the events of September 11 and the relative position in the three rating systems provided. In view of the current economic conditions and the certainty that is provided by annuities it is appropriate to proceed.

All of the hourly plans can be included in the annuitization program with the exception of the five underfunded plans that are covered by the James River – PBGC Agreement. Two of the plans covered by this agreement will be released by the PBGC for this purpose. The Salaried Plan cannot be included in any scenario based on the current funding status. There is no excess funding that is capable of covering the underfunding of the Salaried Plan.

The offer of Pace International Union to merge the hourly plans into PIUMPF, their multi-employer plan was discussed. While it is anticipated that the Union will be

disappointed with the decision to annuitize the plans rather than effect a merger, the PBGC has expressed reservations at this course of action. While the PBGC agreed to release the two plans under the James River Agreement and any other claims against the estate under the annuitization scenario, there was no such agreement if we insisted on the merger.

The recommended carrier is Hartford based upon their superior ratings by three insurance rating systems and the other factors previously mentioned.

Motion: That we annuitize the hourly pension plans by accepting the bid of the Harford Insurance Company. (Showalter, Olah, Unanimous)

Robert Cicero will contact the PBGC to secure their agreement to the release of the two overfunded frozen plans subject to the James River Agreement and confirm their approval of this course of action.

[REDACTED]

Adjourn

There being no further business, and on motion duly made and seconded, the meeting was adjourned at 5:30 p.m.

/s/ Evan C. Davis
Evan C. Davis, Secretary